

CHAPTER 9

ENFORCEMENT PROCEDURES

SECTION 9.1 - PURPOSE

This chapter provides the necessary information needed to properly prepare the appropriate actions resulting from inspections or investigations. It is not a modification, alteration, or revision of the Hazardous Materials Regulations. Any legal proceeding instituted against a person must be based on the official regulations found in the Code of Federal Regulations, Title 49, Parts 100-180, published annually by the Government Printing Office. If supervisors are unsure of the appropriate action in a given situation they should consult with the Director of Field Operations or the Assistant Chief Counsel for Hazardous Materials Safety Law.

Because the primary purpose of PHMSA's enforcement activities is to bring about compliance with the regulations, investigators must encourage apparent violators to take remedial actions for the immediate situation and corrective actions to avoid future violations. This encouragement should include answering questions and providing information to assist companies and individuals in understanding the regulations and determining what remedial and corrective actions might be taken. Investigators should explain what satisfactory remedial or corrective actions had been taken in similar cases, and should refer the involved parties to other appropriate sources of information, such as the Hazardous Materials Standards Division, the Hazardous Materials Approvals & Permits Division, Hazardous Materials Initiatives & Training Division, Hazardous Materials Technology Division, industry associations, and standards -issuing organizations.

The manufacturer, requalifier, reconditioner, repairer of DOT specification or UN standard packaging, and the shipper of hazardous materials (as well as anyone else subject to the HMR) is fully responsible for knowing and complying with the regulations. The investigator's responsibility is to assist the company or individual in doing so. To avoid allegations or lawsuits contending that an investigator seized someone's property or violated someone's rights, the investigator should make it very clear that they are merely providing advice on compliance, and are not ordering anyone to do anything (See Section 5.10, Imminent Hazard/Potential Violation).

SECTION 9.2 - GENERAL

Following the inspection, investigators shall meet with their supervisor to discuss the outcome of inspections or investigations, summarizing the areas of non-compliance, if any were noted, and evaluate the information collected. Investigators will prepare an Inspection/Investigation Report (ININREPT) in HMIS as outlined in this manual, submit it to the region supervisor, and receive final approval for accuracy from the supervisor within 60 days of the inspection.

Upon receiving the report, the supervisor will review the report for accuracy of regulatory, policy, and procedural issues and verify that the report has been prepared in accordance with this manual. If probable violations were noted, the supervisor will review the evidence submitted in support of the allegations. If the report is found to be incomplete, inaccurate, or not to meet the desired quality standards, the supervisor shall return it for revision.

SECTION 9.3 - NO FURTHER ACTION REPORT

When no discrepancies are discovered during an inspection or investigation, complete an ININREPT minus the violation pages in the HMIS. A report must be completed. It is the only record of the inspection or investigation. Upon receiving an inspection report that cites no violations, the supervisor will review the report to determine that the investigator's conclusion was correct, and that no further action should be taken. If the supervisor concurs with the report, the report will be closed.

SECTION 9.4 - ADVISORY LETTER

On occasion, investigators may encounter a situation during an inspection where the company is not actually in violation of a regulation, but is performing some action or procedure which if not corrected, could lead to a violation. Such a situation is usually termed as a quality control (QC) item. Upon obtaining evidence from observations or other sources or upon completion of an inspection or investigation where only quality control items were noted, prepare an Advisory Letter for the supervisor's signature. The HMIS system will generate a template automatically, or use a free form template also found in HMIS. A copy of the Exit Briefing and QC page(s) of the ININREPT will be enclosed with the letter.

SECTION 9.5 - WARNING LETTER

When evidence is obtained resulting from observations or other sources, or upon completion of an inspection or investigation where probable violations were noted of a less serious nature, the region supervisor may advise the investigator to prepare a Warning Letter. The investigator will prepare this report in the same manner as preparing a civil penalty case. The HMIS system will generate the Warning Letter upon approval of the report by the supervisor. A copy of the Exit Briefing and the violation pages of the ININREPT will be enclosed with the letter.

SECTION 9.6 - TICKET FOR NONCOMPLIANCE

When evidence is obtained that a violation has occurred that has an indirect effect on safety, the region supervisor may advise the investigator to prepare a report for a Ticket for Noncompliance. A ticket results in a penalty that is 50% of the penalty stated in the penalty guidelines listed in 49 CFR, Part 107, Subpart D, Appendix A. A ticket may not be issued when the Office of the Chief Counsel has declined to issue a civil penalty in a civil penalty case, unless the Office of the Chief Counsel specifically instructs this action.

The ticketing program is discussed in detail in Chapter 14 of this manual.

SECTION 9.7 – CIVIL PENALTY CASE

When an inspection or investigation has resulted in probable violations of a serious nature, the supervisor will refer the report directly to the Office of the Chief Counsel accompanied by a memorandum with the supervisor's recommendations. Chief Counsel has the final authority to issue or decline a civil penalty action. Investigators will work closely with the attorney assigned to handle the civil penalty action, providing technical advice and in the capacity of a factual witness. All original documents are to be retained until the Office of the Chief Counsel has completed their action.

Civil penalty case procedures are discussed in detail in Chapter 10 of this manual.